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In the Supreme Court of the United States

October Term, 1982

No.

GEORGE ALFRED STRICKLER, III
and RALPH JOSEPH STRICKLER,
Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

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QUESTIONS PRESENTED FOR REVIEW

Whether Certiorari should be granted in this case to determine whether the decision of the Pennsylvania Superior Court, upholding the seizure of Petitioners and their car without probable cause but allegedly with "sufficient suspicion," is in conflict with applicable decisions of this Court.

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REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA:

The Opinion of the Superior Court of Pennsylvania was filed on June 12, 1981, affirming the conviction of Petitioners herein. The Opinion was filed at No. 582 and 586, Pittsburgh, 1980, and is contained in full in the Appendix hereto.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA:

The Pennsylvania Supreme Court, in an Order dated March 2, 1982, at No. 214 W.D. Misc. Docket, 1981, denied the Petitioners' Petition for Allowance of Appeal. Said Order is contained in the Appendix hereto.

In addition, on May 26, 1982, the Pennsylvania Supreme Court entered an Order at the same term and number, denying Petitioners' Application for Reconsideration of Denial of Allowance of Appeal. Said Order is contained in the Appendix hereto.

JURISDICTION

The Judgment sought to be reviewed by this Court was issued by the Superior Court of Pennsylvania on June 12, 1982. The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal on March 2, 1982, and denied reconsideration of that ruling on May 26, 1982.

On July 29, 1982, in an Order of this Court, signed by Associate Justice William J. Brennan, Jr., an extension of time within which to file a Petition for a Writ of Certiorari was granted, extending the time until August 24, 1982.

Jurisdiction of this Court to review the determination of the Pennsylvania Supreme and Superior Courts is given by 28, U.S.C. §1257.

This Petition is being made by the Petitioners in the case below, parties to the said action.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause,...

STATEMENT OF THE CASE

At approximately 1:45 a.m. on September 21, 1978, a drug store was burglarized in a suburb of Pittsburgh. A security guard from a neighboring business arrived at the scene several minutes after the burglary and, while there, observed a car drive past the drug store. He did not see the burglars enter the car and did not see from where the car came. He merely saw a car pass the drug store. He telephoned and informed the police of the burglary and advised them of the car he had seen. He advised the police that the car had two occupants and was a green General Motors car.

Four or five minutes later and several miles further down the road—with many other roads intersecting—the police saw and stopped a grey and black Buick with three occupants. Afterwards, the police observed pills in the vehicle and arrested the occupants of that vehicle. A timely suppression motion was filed in the trial court, challenging the seizing of the car and its occupants as being violative of the Fourth Amendment. Suppression was denied with the lower court finding that probable cause existed, and the occupants were convicted of burglary.

Upon appeal to the Pennsylvania Superior Court, Petitioners argued that no probable cause existed for the seizure of the vehicle. The Superior Court agreed but, nevertheless, upheld the conviction by holding that, despite the lack of

probable cause, "we find that the police were possessed of sufficient facts to create sufficient suspicion in the eyes of a trained police officer to justifying an intermediate response of stopping the car to question the appellants." (Slip. op. p. 8, Appendix, p. A-8).

Petitioners then sought allowance for appeal from the Pennsylvania Supreme Court, arguing that the Fourth Amendment was violated, which was denied on March 2, 1982. Petitioners' Application for Reconsideration of the Denial was also denied on May 26, 1982.

On July 26, 1982, Petitioners requested and received a thirty-day extension (until August 24, 1982) to file a Petition for a Writ of Certiorari to this Court.

ARGUMENT

CERTIORARI SHOULD BE GRANTED IN THIS CASE TO DETERMINE WHETHER THE DECISION OF THE PENNSYLVANIA SUPERIOR COURT, UPHOLDING THE SEIZURE OF PETITIONERS AND THEIR CAR WITHOUT PROBABLE CAUSE BUT ALLEGEDLY WITH "SUFFICIENT SUSPICION," IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

In *Terry v. Ohio*, 392 U.S. 1, at 22 (1968), this Court first articulated that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest."

Terry, supra, recognized, as this Court held in *Adams v. Williams*, 407 U.S. 143, at 145-146 (1972), "that it may be the essence of good police work to adopt an intermediate response." The court in *Adams v. Williams, supra*, goes on to hold that:

"a brief stop of a suspicious individual in order to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams, supra*, at 146.

In *Terry*, the officer stopped a *pedestrian*, and in *Adams v. Williams, supra*, the officer questioned a man seated in a *parked* car. In both situations, the intrusions were minimal, and in both cases, the possibility of weapons and danger to the officer were involved. As this Court later discussed in *Dunaway v. New York*, 422 U.S. 207, 210-211 (1979), the *Terry* exception to the probable cause rule, which was later refined in *Adams v. Williams*, is a narrow one; and "this Court has been careful to maintain its narrow scope." *Dunaway v. New York, supra*, at 210. In *Dunaway*, this Court did not permit the "investigatory detention" in that case to stand.

While it is true that in some situations this Court has upheld the seizures of *moving* vehicles, as the Pennsylvania Court did in the instant matter, with less than probable cause, these have always been situations unlike the instant matter, where the law enforcement official possessed a great deal more knowledge than was the case here and have *always* involved seizures in a special context. In *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), for example, this Court "applied *Terry* in the special context of roving border patrols stopping automobiles to check for illegal immigrants." *Dunaway, supra*, at 210, and in *United States v. Cortez*, U.S. , S.Ct. 690 (1981), also a border patrol situation like *Brignoni-Ponce*, police were in possession of a great deal of objective criteria that come close to being probable cause.

In addition, this Court has consistently continued to recognize the expectation of privacy that one maintains in an automobile. In refusing to apply the *Terry* "exception" to the spot check of automobiles, this Court in *Delaware v. Prouse*, 440 U.S. 664 (1979), recognized the potential for abuse in

stopping automobiles with less than probable cause. In so doing, this Court held as follows:

> "Undoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel. Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed. As *Terry v. Ohio, supra*, recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles." See *Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972).

In the instant matter, not only was an "intrusion" made which this Court has recognized as a *seizure*, in *Delaware v. Prouse, supra*, thus bringing into play the protections of the Fourth Amendment, but in addition, it was a seizure made without the threat of weapons, in no special "border" context and with the officer possessing so few facts that the seizure of the vehicle was based on nothing more than guess work.

A vehicle was stopped in this case several miles away from a burglarized drugstore that did not even meet the description of a vehicle that simply drove past the drug store some time after the burglary. The amount of speculation, guesswork, and circumspection engaged in by the Pennsylvania Superior Court opinion in order to conclude that the car stopped *may* have been the one seen harmlessly driving past a drug store that was earlier burglarized alone is enough to defeat any idea of a justifiable intermediate response.

The rationale and holding of the Pennsylvania Appellate Courts in affirming this conviction conflicts with all of the Supreme Court decisions cited in this Petition, which have

carefully sought to create only a narrow exception to the probable cause rule rather than a floodgate through which the Fourth Amendment is washed away.

For these reasons, Petitioners respectfully request that this Court grant certiorari to resolve the conflict between the instant opinion and the decisions of this Court heretofore mentioned.

Respectfully submitted,

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